

(5) The mortgagor is not financially qualified to support monthly mortgage payments on a modified mortgage or on a refinanced mortgage in which the total arrearage is included.

(c) *Repayment of the subordinate lien.* The mortgagor must execute a mortgage in favor of HUD with terms and conditions acceptable to HUD for the amount of the partial claim under §203.414(a). HUD may require the mortgagee to be responsible for servicing the subordinate mortgage on behalf of HUD.

(d) *Application for insurance benefits.* Along with the prescribed application for partial claim insurance benefits, the mortgagee shall forward to HUD the original credit and security instruments required by paragraph (c) of this section.

[61 FR 35018, July 3, 1996, as amended at 62 FR 60130, Nov. 6, 1997]

CONDITION OF PROPERTY

§§ 203.375—203.376 [Reserved]

§203.377 Inspection and preservation of properties.

The mortgagee, upon learning that a property subject to a mortgage insured under this part is vacant or abandoned, shall be responsible for the inspection of such property at least monthly, if the loan thereon is in default. When a mortgage is in default and a payment thereon is not received within 45 days of the due date, and efforts to reach the mortgagor by telephone within that period have been unsuccessful, the mortgagee shall be responsible for a visual inspection of the security property to determine whether the property is vacant. The mortgagee shall take reasonable action to protect and preserve such security property when it is determined or should have been determined to be vacant or abandoned until its conveyance to the Secretary, if such action does not constitute an illegal trespass. "Reasonable action" includes the commencement of foreclosure within the time required by §203.355(b) of this part.

[57 FR 47972, Oct. 20, 1992]

§203.378 Property condition.

(a) *Condition at time of transfer.* When the property is transferred, or a mortgage is assigned to the Commissioner, the property shall be undamaged by fire, earthquake, flood, or tornado, except as set forth in this subpart.

(b) *Damage to property by waste.* The mortgagee shall not be liable for damage to the property by waste committed by the mortgagor, its heirs, successors or assigns in connection with mortgage insurance claims paid on or after July 2, 1968.

(c) *Mortgagee responsibility.* The mortgagee shall be responsible for:

(1) Damage by fire, flood, earthquake, hurricane, or tornado;

(2) Damage to or destruction of security properties on which the loans are in default and which properties are vacant or abandoned, when such damage or destruction is due to the mortgagee's failure to take reasonable action to inspect, protect and preserve such properties as required by §203.377 of this part, as to all mortgages insured on or after January 1, 1977; and

(3) As to all mortgages insured under firm commitments issued on or after November 19, 1992, or under direct endorsement processing where the credit worksheet was signed by the mortgagee's underwriter on or after November 19, 1992, any damage of whatsoever nature that the property has sustained while in the possession of the mortgagee if the property is conveyed to the Secretary without notice to and approval by the Secretary as required by §203.379 of this part.

(d) *Limitation.* The mortgagee's responsibility for property damage shall not exceed the amount of its insurance claim as to a particular property.

[36 FR 34508, Dec. 22, 1971. Redesignated and amended at 41 FR 49735, Nov. 10, 1976; 57 FR 47973, Oct. 20, 1992; 58 FR 32057, June 8, 1993; 61 FR 36265, July 9, 1996; 61 FR 36453, July 10, 1996]

§203.379 Adjustment for damage or neglect.

(a) If the property has been damaged by fire, flood, earthquake, hurricane, or tornado, or, for mortgages insured on or after January 1, 1977, the property has suffered damage because of the mortgagee's failure to take action